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Section II: REMARKS

It is respectfully requested that the changes as noted above in Section I be made to the present application.

In the above-referenced Office Action which was mailed on 9/24/03, Claims 1, 4, 11, 12 and 13 were rejected under 35 USC 101 as being directed toward non-statutory subject matter which is capable of being performed in the mind of a user. As herein amended, structural language has been added to independent claim 1 (and therefore also included in claims 4, 11, 12 and 13 which ultimately depend from claim 1) as suggested by the Examiner, thereby obviating the above-noted 35 USC 101 rejection. Claims 1, 4 and 11-13 as herein amended are submitted to be in condition for allowance under 35 USC 101. Applicant appreciates the Examiner's suggestion in this matter.

Next in the above-noted Office Action, claims 1-26 were rejected under 35 USC 103(a) as being unpatentable over Ausubel (U. S. Patent 5,905,975) in view of Alaia (U. S. Patent 6,230,147 B1). The above noted rejections are respectfully traversed. However, in order to further the prosecution of the present application, and without waiving any of applicant's rights to argue the allowability of the originally presented claims in a subsequent appeal or other proceeding in the event that the Examiner does not concur that the present amendment places the application in condition for allowance, applicant has herein amended the claims by adding clarifying language as required to place them in condition for allowance.

More specifically, it is noted that the present application includes claims 1-26 with claims 1, 14 and 26 being independent claims, claims 2-13 being ultimately dependent from claim 1 and

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claims 14-25 being ultimately dependent from claim 14.

The Ausubel reference teaches the state of the prior art at the time the present application was filed as noted by the Examiner on page 4 of the Office Action and also on pages 1-2 of the present application. Ausubel discloses nothing more than an auction system in which if a reserve price for an auctioned item is not met, the auction is ended and the seller is not obligated to sell the item to the highest bidder since designated reserve price was not met (as discussed on page 2 of the present application). It is this very shortcoming to which the present invention is directed.

The Examiner notes on page 4 of the Office Action that Ausubel does not teach that if the reserve price was not met that the auction period is automatically extended, and does not teach that a seller is enabled to enter a duration of the extension and a number of authorized extensions. To meet these voids in Ausubel, the Alaia reference was cited. Applicant submits that Alaia falls well short of meeting or rendering obvious the recitations of the present invention which are admittedly not found in Ausubel.

The Alaia reference describes a "buyer" offered auction not a "seller" offered auction. The dynamics of each type of auction are totally different with different operational characteristics, goals and results. The claims of the present application are all directed to a seller auction as stated in the claims.

Alaia specifically states in the Abstract that "the bidding status of a lot can be set to a 'pending' status after the nominal closing time for submission of bids to allow bidders to alert the auction coordinator of technical problems in submission of bids", i.e. **there is a break in the Alaia buyer-auction**

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process. In the present invention, if a predetermined reserve price is not met then an extension is implemented automatically. A break in the auction would not solve the problem addressed by the applicant of enabling a continued bidding in order to obtain a bid equal to or greater than a predetermined reserve price bid. With the present invention, bids are evaluated compared to the predetermined reserve price number whereas in Alaia, bids are evaluated against a current best bid - **there is no mention or even suggestion of anything that might even arguably correspond to a predetermined reserve price as that term is disclosed and claimed in the present application.** This distinction is critical because it shows that the two auction systems are quite different and the operational aspects of one system (a buyer system) cannot be substituted for those of another system (a seller system) without a total breakdown of the flow of the seller auction system. That being the case, it is submitted that pieces and parts of a buyer auction system cannot be substituted for, or suggestive of, other pieces and parts of a seller-oriented auction since such a substitution would render the seller auction system inoperable for its intended purpose. A direct substitution of the Alaia bidding extension process would, by definition, depend only on the "current" or "then low" bidding compared to other received bids and would have absolutely no use for a predetermined reserve price designation for initiating an extended bid period, and thus cannot be used to render the claimed extension processing (which includes a "predetermined reserve price" designator) obvious.

It is therefore believed that there is no suggestion or nexus among the references to even suggest the total combination of elements and relationships as recited in the claims as herein amended. As noted earlier, the Alaia and Ausubel references are even incompatible with each other and in fact teach away from the

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present invention. Again, it is submitted that all inventions can be broken down into incremental individual parts and each incremental individual part can generally be found in published references. However, where there is no teaching or suggestion in any of the references for the **specific total combination of elements and relationships** among those elements, and especially when cited references are incompatible with each other, it is submitted to be inappropriate use applicant's own disclosure as a recipe, to find piecemeal prior art references for individual claim elements, and then to combine those references in a manner disclosed only by the applicant and not taught or even suggested in the references, in order to reject applicant's own claims.

In order to further clarify the claims of the present application, all of the independent claims, and therefore all of the remaining dependent claims through ultimate dependence from one of the amended independent claims, have been amended to clearly recite the features of the present invention which are not taught or even suggested by the prior art references. More specifically, independent claims 1, 14 and 26 have herein been amended to be directed to a seller auction in which the extension period is automatic and based upon a predetermined reserved price input by the seller. The recited total combination of features clearly distinguishes the present invention from the references. Moreover claim 2 is further limited to providing an input screen at a seller terminal at which a seller is enabled to input the predetermined reserve price prior to an auction. Claim 26 also includes enablement for seller input of an authorized number of extension periods. Each of the remaining claims ultimately depends from one of the independent claims and includes all of the limitations of the independent claim from which it ultimately depend as well as even further limitations of the individual dependent claim. As herein amended, claims 1-26 are believed to

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be allowable under 35 USC 103(a) over Ausubel and Alaia, either taken individually or in combination.

Thus, it is submitted that claims 1-26, as herein presented, are believed to be in condition for allowance, an early notice of which is hereby requested. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting the allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below. The Examiner's attention to this matter is greatly appreciated.

Respectfully submitted,

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